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|-----------------|-------------|----------------------|---------------------|------------------|
| 09/742,661      | 12/21/2000  | Vincent M. Addressi  |                     | 7521             |

7590 04/06/2006  
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EXAMINER

NEURAUTER, GEORGE C

ART UNIT PAPER NUMBER

2143

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/742,661

Applicant(s)

ADDESSI, VINCENT M.

Examiner

George C. Neurauter, Jr.

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2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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#### **DETAILED ACTION**

Claims 16-25 are currently presented and have been examined.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 16-25 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Drawings***

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

#### ***Claim Objections***

Claim 19 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 19 is dependent on claim 17, which recites enumerates a number of functions A-G. Claim 19 then recites "wherein each of said node is enabled to perform less than all of said

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functions A-G." This limitation is considered to be broader in scope since claim 19 requires that the nodes perform less functionality than was required in claim 17. Therefore, claim 19 does not further limit claim 17.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19, 21, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 19 and 21 recite wherein the nodes are enabled to perform either simultaneously or less than all of the plurality of functions A-G as enumerated in claim 17. However, it is unclear as to which specific functions are included or excluded from these claims and any exclusion of certain functions may cause the system to become inoperative.

Claims 21 and 25 also refer to functions that are not enumerated within claim 16 which these claims are dependent from and, therefore, these functions lack proper antecedent basis. In order to avoid piecemeal examination and to give the Applicant a

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better appreciation for relevant prior art, the Examiner will assume that these claims depend from the respective claims in order to give the claims proper antecedent basis, specifically claim 17 for claim 21 and claims 17 and 23 for claim 25. See, e.g., *Ex parte Ionescu*, 222 USPQ 537 (Bd. App. 1984) and MPEP 2173.06.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 16-25 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6 697 365 to Messenger.

Regarding claim 16, Messenger discloses a Dynamic Connection Structure for facilitating the transfer of target digital files between and among client nodes of a computerized network, said Dynamic Connection Structure comprising a plurality of said client nodes, (Figure 3, elements 102 and 108)

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wherein each of said target digital files consists of a number of portions, and each of said number of portions comprises packets, wherein said plurality of nodes comprises at least a first subset of nodes, said nodes of said first subset of nodes having open network connections; and wherein said first subset of nodes form a subsystem for transferring portions of files, said portions of files being transferred in each instance initially from a node configured to be a root node (referred to throughout the reference as "Originator"). (column 2, lines 54-66)

Regarding claim 17, Messenger discloses the Dynamic Connection Structure according to claim 16, wherein each of said nodes is enabled to perform the following functions:

A. receiving at least one portion of a first file from one of a first node of said first subset of nodes in said DCS and from said root node enabled to contribute content to at least one node of said DCS; B. receiving remaining portions of said first file from one of a second node of said first subset of nodes of said DCS and a root node enabled to contribute content to at least one node of said DCS; C. transferring said at least one portion of said first file to at least one of said plurality of nodes of said DCS; D. transferring said remaining portions of

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said first file at least one of said plurality of nodes in said DCS; (column 2, lines 54-66; column 13, lines 10-22)

E. receiving requests from said plurality of nodes of said first subset of said DCS for said first portion of said file; F. receiving requests from said plurality of nodes of said first subset of said DCS for said remaining portions of said file; and G. transmitting said received requests for said first portion and said remaining portions of said file to nodes of said first subset of nodes of said DCS. (column 17, line 60-column 18, line 12)

Regarding claim 18, Messenger discloses the Dynamic Connection Structure according to claim 17, wherein each of said nodes is enabled to perform said functions A - G in any sequence. (column 17, line 60-column 18, line 12)

Regarding claim 19, Messenger discloses the Dynamic Connection Structure according to claim 17, wherein each of said nodes is enabled to perform less than all of said functions A - G. (column 17, line 60-column 18, line 12)

Regarding claim 20, Messenger discloses the Dynamic Connection Structure according to claim 16, wherein each of said nodes of said Dynamic Connection Structure comprises binary tree algorithm means for determining client connections in said

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dynamic connection structure. (column 11, lines 11-24 and 36-49; column 14, lines 51-65)

Regarding claim 21, Messenger discloses the Dynamic Connection Structure according to claim 16, wherein said nodes are enabled to perform simultaneously a plurality of said functions A - G. (column 17, line 60-column 18, line 12)

Regarding claim 22, Messenger discloses the Dynamic Connection Structure according to claim 21, wherein said nodes are enabled to perform simultaneously said functions A - D. (column 17, line 60-column 18, line 12)

Regarding claim 23, Messenger discloses the Dynamic Connection Structure according to claim 16, wherein said nodes are enabled further to perform one or more of the functions of H. re-organizing itself and said DCS in accordance with instructions received from a server program stored on a node configured to be a server; I. identifying and sorting separate portions of said first file; and J. assembling said first portion and said remaining portions into a complete file. (column 12, lines 6-13)

Claim 24 is rejected since claims 24 recites substantially the same limitations as recited in claim 24.

Regarding claim 25, Messenger discloses the Dynamic Connection Structure according to claim 16, wherein each of said



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plurality of client nodes is provided with software means for enabling each of said client nodes to perform any combination of said functions A-G and H-J. (column 12, lines 6-13; column 17, line 60-column 18, line 12)

### **Conclusion**

It is noted that the column, line, and/or page number citations used in the prior art references as applied by the Examiner to the claimed invention are for the convenience of the Applicant to represent the relevant teachings of the prior art. The prior art references may contain further teachings and/or suggestions that may further distinguish the citations applied to the claims, therefore, the Applicant should consider the entirety of these prior art references during the process of responding to this Office Action. It is further noted that any alternative and nonpreferred embodiments as taught and/or suggested within the prior art references also constitute prior art and the prior art references may be relied upon for all the teachings would have reasonably suggested to one of ordinary skill in the art. See MPEP 2123.

The prior art listed in the PTO-892 form included with this Office Action disclose methods, systems, and apparatus similar to those claimed and recited in the specification. The Examiner has cited these references to evidence the level and/or

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knowledge of one of ordinary skill in the art at the time the invention was made, to provide support for universal facts and the technical reasoning for the rejections made in this Office Action including the Examiner's broadest reasonable interpretation of the claims as required by MPEP 2111 and to evidence the plain meaning of any terms not defined in the specification that are interpreted by the Examiner in accordance with MPEP 2111.01. The Applicant should consider these cited references when preparing a response to this Office Action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gcn

  
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